UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, ex rel., LEATRA HARPER, et al., Relators, v. MUSKINGUM WATERSHED CONSERVANCY DISTRICT, Respondent.	)))))))))))))	CASE NO.: 5:13-CV-2145 JUDGE LIOI **FIRST AMENDED COMPLAINT** **Jury trial demanded herein**

For their amended complaint against respondent Muskingum Watershed Conservancy District ("Respondent"), relators Leatra Harper, Steven Jansto and Leslie Harper ("Relators") state:

JURISDICTION AND VENUE

1. Relators, allege causes of action under 31 U.S.C. § 3729 et seq. of the False Claims Act arising from Respondent's failure to return property and money belonging to the United States.
2. Relators are the original source of these allegations.
3. Relators provided the government with a confidential disclosure statement and exhibits to substantiate the allegations.
4. Jurisdiction is conferred upon this Court by 31 U.S.C. § 3732 and 28 U.S.C. § 1331 because this action arises under the laws of the United States.

THE RELATORS

5. Relators, Leatra Harper, Steven Jansto, and Leslie Harper are United States citizens and residents of Ohio. Leatra and Steven own property abutting Seneca Lake.

THE RESPONDENT

6. Muskingum Watershed Conservancy District (MWCD) is a political subdivision of Ohio. It was organized in 1933 to reduce the effects of flooding and conserve water for beneficial public uses under Ohio Revised Code Chapter 6101 (commonly called the Conservancy Act). The MWCD has jurisdiction in an 18-county area of Ohio including Ashland, Belmont, Carroll, Coshocton, Guernsey, Holmes, Harrison, Knox, Licking, Morgan, Muskingum, Noble, Richland, Stark, Summit, Tuscarawas, Wayne and Washington counties.

FACTUAL BASIS OF ALLEGATIONS

7. MWCD claims to hold an ownership interest in surface and mineral rights of certain lands in southeastern Ohio deeded to MWCD by the Federal Government, as described in a deed attached as “Exhibit A” and incorporated by reference.

8. The lands described in the deed include acreage in Ohio at Seneca Lake in Guernsey and Noble Counties, Leesville Lake in Carroll County, Clendening Lake in Harrison County, and Piedmont Lake in Harrison County, all of which are reservoir lakes and contiguous lands.

9. The United States granted the property to the MWCD “… so long as said described lands shall be held and utilized for recreation, conservation and reservoir development purposes, and in the event said Grantee shall cease using said lands for such purposes or shall alienate

or attempt to alienate any part of parts thereof, the title to said lands shall revert to and revest in the United States of America….” Ex. A.

10. On February 21, 2013, John Hoopingarner the MWCD Executive Director (“Hoopingarner”) signed a lease of subsurface minerals rights to 6,553.3391 acres of land at Seneca Lake, more or less, including some deeded lands described in Exhibit A, to Antero Resources Appalachian Corporation to extract oil, gas and other mineral reserves via horizontal hydraulic fracturing. In consideration for leasing the mineral rights to Antero. MWCD is to receive $40,630,702.42, more or less, plus royalties from mineral production. Ex. B.

11. On May 7, 2012, Hoopingarner signed a lease of subsurface minerals rights to 3,749.089 acres of land at Leesville Lake, more or less, including some deeded lands described in Exhibit A, to Chesapeake Exploration, LLC to extract oil, gas and other mineral reserves via horizontal hydraulic fracturing. In consideration for leasing the mineral rights to Chesapeake, MWCD is to receive $21,744.716.20, more or less, plus royalties from mineral production. Ex. C.

12. On June 17, 2011, Hoopingarner signed a lease of subsurface minerals rights to 6,485.79 acres of land at Clendening Lake, more or less, including some deeded lands described in Exhibit A, to Gulfport Energy Corporation to extract oil, gas and other mineral reserves via horizontal hydraulic fracturing. In consideration for leasing the mineral rights to Gulfport, MWCD is to receive $15,565,896, more or less, plus royalties from mineral production. Ex. D.

13. On April 22, 2014, Hoopingarner signed a lease of subsurface minerals rights to 6,363.33 acres of land at Piedmont Lake, more or less, including some deeded lands described in Exhibit A, to Antero Resources Corporation to extract oil, gas and other mineral reserves via

horizontal hydraulic fracturing. In consideration for leasing the mineral rights to Antero. MWCD is to receive $95,449,590, more or less, plus royalties from mineral production. Ex. E.

14. Under the leases, the above-described leasing companies may extract the mineral resources by drilling from adjacent properties underneath the surface into the MWCD subsurface leased lands.

15. The hydraulic fracturing underneath the above-described lake beds threaten to cause leakage of gas, fracking fluids, flowback and other toxic contaminants into the geological formations affecting the lake and damaging downstream communities.

16. When MWCD approved the above-described leases, it broke the deed's conditions.

17. MWCD used the deeded lands for a purpose contrary to "recreation, conservation and reservoir development purposes" by electing to lease them for mineral extraction.

18. The above-described leases constitute acts of alienation which revert the land and its proceeds to the United States government.

19. From the reversion date and/or the date of cessation of use for recreation, conservation and reservoir development, MWCD unlawfully withheld land and money due the United States.

VIOLATIONS OF THE FALSE CLAIMS ACT

COUNT I - 31 U.S.C. § 3729 (a)(1)(C)-Conspiracy

20. The above allegations are re-alleged as if set forth fully.

21. Respondent conspired to possess and obtain custody and control of property and money to be used by the United States Government and/or knowingly avoided its obligation to turn money and property over to the Government.

22. The United States is due the return of the acreage described in the deed and an amount over $6,341,250 dollars, and any additional amounts received by Respondent for upfront payments, bonuses, royalties or other payments in connection with the above-described leases of the land contained in the deed attached as Ex. A.

23. This conspiracy subjects MWCD to civil fines under the False Claims Act and three times the damages to the United States.

COUNT II - 31 U.S.C. § 3729 (a)(1)(D)

24. The above allegations are re-alleged as if set forth fully.

25. Respondent has possession, custody, or control of property or money to be used by the Government and knowingly caused to be delivered, less than all of that money or property.

26. Because of Respondent's actions, the United States has been deprived of the acreage described in the deed and an amount over $6,341,250 dollars, and any additional amounts received by Respondent for upfront payments, bonuses, royalties or other payments in connection with the above-described leases of the land contained in the deed attached as Exhibit A.

27. For each failure to turn over money and property, MWCD is subject to civil fines under the False Claims Act and three times the damages to the United States.

COUNT III - 31 U.S.C. § 3729 (a)(1)(G)

28. The above allegations are re-alleged as if set forth fully.

29. Respondent has knowingly concealed or knowingly and improperly avoided or decreased an obligation to pay or transmit money or property to the Government.

30. Respondent has an unfulfilled duty to report and return property and money to the Federal Government.

31. The United States is due the return of the acreage described in the deed and an amount over $6,341,250 dollars, and any additional amounts received by Respondent for upfront payments, bonuses, royalties or other payments in connection with the above-described leases of the land contained in the deed attached as Exhibit A.

32. For each such concealment, avoidance, or decrease of obligation to turn over money and property is subject to a civil fine under the False Claims Act and three times the damages to the United States.

WHEREFORE, Relators demand judgment:

a) That this Court enter a judgment against Respondent in an amount equal to three times the damages the United States Government has sustained because of Respondent's false claims plus a civil penalty of $5,000 to $10,000 for each violation of 31 U.S.C. Section 3729.

b) That Relators be awarded the maximum amount allowed under §3730(d) of the False Claims Act;

c) That Relator be awarded costs and expenses including reasonable attorneys' fees; and

d) That the Court order such other relief as is appropriate.

Respectfully submitted,

/s/ Warner Mendenhall
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JURY DEMAND

Relator demands a trial by Jury under R. 38 of the Federal Rules of Civil Procedure.

/s/ Warner Mendenhall
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CERTIFICATE OF SERVICE

I certify that on March 12th, 2015, a copy of the foregoing document was filed with the Court. Notice of this filing will be served on all parties via regular U.S. mail. Parties may also access this filing through the Court's system.

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